

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Margot Hesel	Team: Team # 8	CCRB Case #: 200903129	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 02/24/2009 12:01 AM	Location of Incident: intersection of § 87(2)(b) and § 87(2)(b)	Precinct: 33	18 Mo. SOL 8/24/2010	EO SOL 8/24/2010	
Date/Time CV Reported Tue, 02/24/2009 1:01 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/02/2009 1:42 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jason Landusky	16951	936908	PBMN TF
2. SGT Gregory Pekera	04870	919546	PBMN TF
3. POM Peter Bolte	30919	933649	PBMN TF

Officer(s)	Allegation	Investigator Recommendation
A.POM Jason Landusky	Abuse: PO Jason Landusky stopped the car in which § 87(2)(b) was an occupant.	
B.POM Jason Landusky	Force: PO Jason Landusky used physical force against § 87(2)(b)	
C.POM Jason Landusky	Abuse: PO Jason Landusky frisked § 87(2)(b)	
D.POM Jason Landusky	Abuse: PO Jason Landusky searched § 87(2)(b)	
E.POM Jason Landusky	Discourtesy: PO Jason Landusky acted rudely toward § 87(2)(b)	
F.POM Peter Bolte	Abuse: PO Peter Bolte searched the car in which § 87(2)(b) was an occupant.	
G.SGT Gregory Pekera	Abuse: Sgt. Gregory Pekera searched the car in which § 87(2)(b) was an occupant.	
H.SGT Gregory Pekera	Off. Language: Sgt. Gregory Pekera made remarks to § 87(2)(b) based upon ethnicity.	
I.POM Jason Landusky	Abuse: PO Jason Landusky threatened to issue a summons to § 87(2)(b)	

## Synopsis

On February 24, 2009, at approximately 12:00 AM, PO Jason Landusky from the Manhattan North Anti-Crime Auto Larceny Unit stopped § 87(2)(b)'s vehicle at the intersection of § 87(2)(b) and § 87(2)(b) in Manhattan (**Allegation A**). PO Landusky pushed § 87(2)(b) against his vehicle, punched § 87(2)(b) in the testicle, frisked and searched § 87(2)(b) and slapped § 87(2)(b)'s wallet out of his hand (**Allegations B, C, D and E**). Sgt. Gregory Pekera and PO Peter Bolte from the Manhattan North Anti-Crime Auto Larceny Unit searched § 87(2)(b)'s vehicle (**Allegations F and G**), and Sgt. Pekera made remarks to § 87(2)(b) based upon ethnicity (**Allegation H**). PO Landusky threatened to issue § 87(2)(b) a summons (**Allegation I**). § 87(2)(b) did not receive a summons and the officers left the scene.

§ 87(2)(g)

## Summary of Complaint

§ 87(2)(b) is a § 87(2)(b) Hispanic male. He is 5'9" tall, and has black hair and brown eyes. § 87(2)(b) was filed a complaint with Internal Affairs on February 24, 2009, generating log #09-08763, which was forwarded to the CCRB on March 2, 2009 (encl. 6a-b). § 87(2)(b) was interviewed at the CCRB on March 25, 2009 (encl. 8a-c). § 87(2)(g)

On February 24, 2009, at approximately 12:00 AM, § 87(2)(b) was alone inside his car, double parked on § 87(2)(b) in between § 87(2)(b) and § 87(2)(b). § 87(2)(b) drives a 1998 White Ford minivan. § 87(2)(b) had pulled his car over to say hello to an acquaintance, § 87(2)(b), who was standing on the sidewalk on § 87(2)(b) and § 87(2)(b). § 87(2)(b) made small talk for five minutes. § 87(2)(b) did not exchange anything with § 87(2)(b) or make any physical contact with him. § 87(2)(b) saw a yellow taxi cab which he recognized as an unmarked police vehicle drive by. As § 87(2)(b) was double parked, he decided to move because he did not want to get a ticket. § 87(2)(b) said goodbye to § 87(2)(b) and continued to drive west on § 87(2)(b) on his way home.

Two to three minutes later, § 87(2)(b) came to the intersection of § 87(2)(b) and § 87(2)(b). While driving, § 87(2)(b) did not make any sudden movements, and he did not think he committed any traffic violations. § 87(2)(b) saw that the yellow taxi was behind him, and its lights were on. § 87(2)(b) immediately pulled his car over to the side on § 87(2)(b) (**Allegation A**). Three officers exited the taxi. Two officers, PO1 and PO2, approached the driver's side of § 87(2)(b)'s car, while PO3 approached the passenger's side. PO1 was a 30-year-old, 5'9"-6'0" tall, 180 lb white male with black hair. PO2 was a 30-year-old, 5'6"-5'8" tall, 170 lb white male. PO3 was a 30-year-old, 5'9" tall, 170 lb white male. PO1, PO2 and PO3 were subsequently identified by the investigation as PO Jason Landusky, Sgt. Gregory Pekera and PO Peter Bolte, respectively, from the Manhattan North Anti-Crime Auto Larceny Unit.

PO Landusky asked § 87(2)(b) in English for his license and registration, which § 87(2)(b) provided. PO Landusky walked to his car with § 87(2)(b)'s license. A few minutes later, PO Landusky returned to § 87(2)(b) and asked him to exit his car. § 87(2)(b) complied. In his statement to the Internal Affairs command center (encl. 6a-b), § 87(2)(b) stated that PO Landusky pulled him out of his vehicle. § 87(2)(b) did not make this allegation during his CCRB statement. § 87(2)(b) stood with his back against the driver's side door of his car. PO Landusky told § 87(2)(b) to spread his legs, and § 87(2)(b) did so. Without exchanging any words with § 87(2)(b) PO Landusky pushed § 87(2)(b) with one of his hands on his chest against the driver's side door. (**Allegation B**) PO Landusky used his right hand to punch § 87(2)(b) in his testicles (**Allegation B**). § 87(2)(b) asked PO Landusky why he was treating him this way. PO Landusky told § 87(2)(b) to shut up. § 87(2)(b) was quiet. PO Landusky patted § 87(2)(b) down on the outsides of his pants pockets (**Allegation C**), and put his hands inside the two front and two back pockets of § 87(2)(b)'s pants and the right and left side pockets of § 87(2)(b)'s jacket

(**Allegation D**). Inside one of § 87(2)(b)'s pants pockets were his wallet and one or two loose dollars. PO Landusky pulled § 87(2)(b)'s wallet out of his pants pocket and threw it on the ground (**Allegation E**).

§ 87(2)(b) could see, behind him, that Sgt. Pekera and PO Bolte had opened the driver's side back door of the minivan and appeared to be looking inside the car (**Allegations F and G**). § 87(2)(b) could not see what Sgt. Pekera and PO Bolte were doing as his back was to them. § 87(2)(b) guessed that Sgt. Pekera and PO Bolte were searching inside the car because after the officers left, numerous papers that had been on the backseat were in disarray on the backseat's floor. Sgt. Pekera and PO Bolte stopped their apparent search, and Sgt. Pekera began speaking with § 87(2)(b). PO Bolte stood next to Sgt. Pekera. Sgt. Pekera asked § 87(2)(b) where he lived. § 87(2)(b) explained that he had been living on § 87(2)(b) for five years, and was on his way home. § 87(2)(b) told Sgt. Pekera that he did not speak English well. Sgt. Pekera told § 87(2)(b) that he should speak English because he was in America (**Allegation H**). § 87(2)(b) told Sgt. Pekera that he should speak Spanish because there were many Spanish speaking residents in the area. Sgt. Pekera did not respond to § 87(2)(b).

PO Landusky asked § 87(2)(b) if he wanted a ticket (**Allegation I**). § 87(2)(b) asked why he would get a ticket. PO Landusky told § 87(2)(b) to get out of here. PO Landusky, Sgt. Pekera and PO Bolte returned to their vehicle and drove away. § 87(2)(b) drove to his house and called 911 to file a complaint regarding the incident. § 87(2)(b) related the entire incident during his 911 call. § 87(2)(b) did not sustain any injuries and did not seek medical treatment. At the time of his interview with the CCRB, mediation was explained to § 87(2)(b) and he stated that he was not interested.

### **Results of Investigation**

#### **Police Officer Statements**

##### **PO Jason Landusky**

PO Jason Landusky is a § 87(2)(b)-old white male. He is 5'7" tall, weighs 185 lbs, and has brown hair and blue eyes. PO Landusky is assigned to the Anti-Crime Manhattan North Auto Larceny Unit and has been a member of service for 4 years. PO Landusky was interviewed at the CCRB on June 17, 2009 (encl. 9e-f). On the day of the incident, PO Landusky worked from 5:30 PM to 2:05 AM with PO Peter Bolte and Sgt. Gregory Pekera. PO Landusky was dressed in uniform and was the assigned operator of an unmarked yellow cab with vehicle number § 87(2)(b).

PO Landusky's memobook (encl. 9a-b) noted the following: At 9:40 PM, he performed a car stop at § 87(2)(b) and § 87(2)(b) for no turn signal and furtive movements. The driver's name, § 87(2)(b) and his date of birth were recorded. A warning was issued to § 87(2)(b) and a UF-250 was prepared. The final disposition noted was 10-91Y, or non-crime corrected.

##### **Stop and Frisk Report (UF-250)**

PO Landusky prepared the UF-250, or stop and frisk report, for § 87(2)(b) (encl. 9c-d). The report noted the following. On February 24, 2009, at 9:40 PM, § 87(2)(b) was stopped and frisked at the intersection of § 87(2)(b) and § 87(2)(b) for suspicion of criminal possession of a weapon. The basis for § 87(2)(b)'s stop and frisk was furtive movements. The report noted that § 87(2)(b) was not searched. The report noted that the area has a high incidence of the reported offense.

##### **CCRB Statement**

PO Landusky had no independent recollection of this incident or of his tour on the incident date. PO Bolte did not remember making the car stop noted above in his memobook, nor did he remember filling out the UF-250 pertaining to this car stop.

PO Landusky did not remember stopping anyone on the incident date for not using their turn signal. PO Landusky knew, from his memobook, that this was what § 87(2)(b) was stopped for, but did not remember this stop. PO Landusky did not remember what furtive movements § 87(2)(b) may have made, but stated that this meant that the suspect would have been moving around a lot in the vehicle while the car stop was being conducted.

PO Landusky did not recall performing a frisk or search of § 87(2)(b). PO Landusky did not remember using any physical force while effecting a car stop on the incident date, including pushing a civilian against their vehicle or punching him in his testicle. PO Landusky did not remember throwing any civilians' wallets on the ground. PO Landusky did not ever say to § 87(2)(b) "You should speak English because you're in America." PO Landusky was directed to his memobook where it noted that a warning was issued. PO Landusky did not remember discussing a warning in lieu of a summons with § 87(2)(b). PO Landusky did not remember saying, "Do you want a ticket?" to § 87(2)(b).

PO Landusky did not remember if a search of § 87(2)(b)'s vehicle was performed. PO Landusky stated that if a civilian made furtive movements and if a frisk revealed no weapons, a limited search of the lungeable areas of vehicle would be performed. PO Landusky stated that there was no general rule for what his duties, as operator, would have been pertaining to the individual stopped, and it depended on the situation.

#### **Sgt. Gregory Pekera**

Sgt. Gregory Pekera is a § 87(2)(b)-old white male. He is 5'9" tall, weighs 170 lbs, and has brown hair and brown eyes. Sgt. Pekera is assigned to the Manhattan North Anti-Crime Auto Larceny Unit and has been a member of service for 12 years. Sgt. Pekera was interviewed at the CCRB on May 22, 2009 (encl. 10c-d). On the day of the incident, Sgt. Pekera worked from 5:13 PM to 2:10 AM with PO Peter Bolte and PO Jason Landusky. Sgt. Pekera was dressed in uniform and was the assigned recorder in an unmarked yellow taxi cab with vehicle number § 87(2)(b).

Sgt. Pekera's memobook (encl. 10a-b) reflected the following: At 9:43 PM at § 87(2)(b) and § 87(2)(b) a car stop was performed, and a UF-250 report was prepared.

#### ***CCRB Statement***

Sgt. Pekera had no recollection of the incident or of his tour on the incident date. Sgt. Pekera did not recall any specific vehicle stops, frisks, or searches of individuals conducted on the incident date. Sgt. Pekera did not remember if any physical force was used by him or by PO Bolte or PO Landusky against any individuals during a car stop, including pushing an individual against a vehicle and punching him in the testicle. Sgt. Pekera stated that such actions would stick out in his mind and he does not tolerate this kind of behavior from his officers.

Sgt. Pekera stated that in general vehicle stop procedure, the operator of the police vehicle would approach the driver's side to request identification and the recorder would approach the passenger's side. If there were a third officer, he would move to different locations based on whether there were passengers in the car and where they were located, so that each officer has a tactical view of the vehicle's occupants.

Sgt. Pekera did not remember performing any vehicles searches, including a limited search or protective sweep, on the incident date. Sgt. Pekera stated that, per procedure while performing a car stop, if he and his partners had some indication that weapons or contraband were being concealed, the driver of the vehicle may be asked to step out of the vehicle, and a limited search of the lungeable areas would be performed. Sgt. Pekera did not ever throw any civilians' wallets on the ground, nor did he see PO Landusky or PO Bolte do so. Sgt. Pekera did not think he issued any summonses on the incident date, nor did he recall having a conversation with a civilian about whether he should be issued a summons. Sgt. Pekera did not say, "Do you want a ticket," to any civilians. Sgt. Pekera did not say "You should speak English because you are in America," to anyone, nor did he hear PO Landusky or PO Bolte say this. Sgt. Pekera stated that he and his partners commonly encounter civilians who speak limited English in the incident area. Sgt.

Pekera speaks limited Spanish and sometimes attempts to communicate with civilians with limited English proficiency. PO Bolte and PO Landusky do not speak Spanish.

#### **PO Peter Bolte**

PO Peter Bolte is a § 87(2)(b)-old white male. He is 6'1" tall, weighs 205 lbs, and has brown hair and green eyes. PO Bolte is assigned to the Manhattan North Anti-Crime Auto Larceny Unit and has been a member of service for five years. PO Bolte was interviewed at the CCRB on July 8, 2009 (encl. 11c-d). On the date of the incident, PO Bolte worked from 5:30 PM to 2:30 AM with Sgt. Gregory Pekera and PO Jason Landusky. PO Bolte was dressed in uniform and was assigned to an unmarked yellow cab with vehicle number § 87(2) PO Bolte did not remember where he was sitting inside the cab.

PO Bolte's memobook (encl. 11a-b) reflected that at 9:40 PM, a car stop was performed and PO Landusky prepared a report. The location of the car stop and the type of report prepared was not noted.

PO Bolte had no recollection of the incident or of his tour on the incident date. PO Bolte estimated that he has performed hundreds of car stops since the incident. PO Bolte did not remember performing a frisk or search of any individuals on the incident date, and did not recall if his assigned partners had done so.

PO Bolte did not remember using any physical force against any individuals while performing a car stop, and did not push any individual against a vehicle or punch him in the testicle. PO Bolte did not see his partners perform any of the above actions. PO Bolte did not slap a wallet out of anyone's hand, nor did he see either of his partners do so. PO Bolte did not remember performing any vehicle searches on the incident date and stated that the necessary circumstances for performing a vehicle search would depend on the situation. PO Bolte did not say, "You should speak English because you are in America," nor did he hear either of his partners make this statement. PO Bolte did not remember discussing issuing a summons to anyone, nor did he remember if either of his partners had done so. PO Bolte did not say, "Do you want a ticket" to anyone, and did not hear either of his partners make this statement.

#### **Police Department Documents**

##### **Patrol Borough Manhattan North Task Force Roll Call**

The Patrol Borough Manhattan North Task Force roll call for February 24, 2009 (encl. 12a-b) indicated that PO Landusky and PO Bolte were assigned to Squad 1 of the Auto Larceny Unit and Sgt. Pekera was the assigned Auto Larceny Supervisor. The roll call indicated that PO Landusky, PO Bolte and Sgt. Pekera were assigned to vehicle number § 87(2)

##### **New York State DMV Records**

§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

##### **New York State Police Records**

Records from the New York State Police (encl. 12g-h) indicated that a warrant check was done for § 87(2)(b) on at 9:24 PM on February 24, 2009. No results were noted.

##### **Civilian Criminal Conviction History**

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
§ 87(2)(b)

## **Officer CCRB History**

### **PO Jason Landusky**

PO Landusky has been a member of service for four years. § 87(2)(g), § 87(4-b)

### **Sgt. Gregory Pekera**

Sgt. Gregory Pekera has been a member of service for 12 years. In case #200701549, vehicle search, property damaged, frisk and search allegations were substantiated against him. No disciplinary action was taken pertaining to the vehicle search, property damage and frisk allegations. Sgt. Pekera received a command discipline A pertaining to the search in this case (encl. 3a-b).

### **PO Peter Bolte**

PO Peter Bolte has been a member of service for five years. He has had no CCRB allegations substantiated against him during this time (encl. 4a).

### **Notice of Claim**

As of July 13, 2009, the New York City Comptroller's Office was not in possession of a Notice of Claim pertaining to this case (encl. 13a-b).

## **Conclusions and Recommendations**

### **Officer Identification**

Statements and documentary evidence identified PO Jason Landusky, Sgt. Gregory Pekera and PO Peter Bolte as involved in the incident. § 87(2)(g)

### **Undisputed Facts**

It is undisputed that PO Landusky stopped § 87(2)(b)'s vehicle.

### **Disputed Facts**

§ 87(2)(g)

### **Assessment of Evidence**

According to § 87(2)(b) he did not commit any traffic violations prior to being stopped by officers.

Although PO Landusky did not remember the incident, his memobook (encl. 9a-b) noted that he stopped § 87(2)(b)'s vehicle because § 87(2)(b) failed to use his turn signal. Neither Sgt. Pekera or PO Bolte remembered the incident and were unable to provide any details pertaining to why § 87(2)(b)'s vehicle was stopped.

According to § 87(2)(b) he did not make any sudden movements while inside his vehicle.

According to a UF-250 report prepared by PO Landusky (encl. 9c-d), § 87(2)(b) made furtive movements that indicated he was possessed a weapon. Neither Sgt. Pekera nor PO Bolte remembered the incident and were unable to provide any details regarding the alleged furtive movements made by § 87(2)(b).

According to § 87(2)(b) after spreading his legs as PO Landusky had asked, PO Landusky pushed him with one of his hands against the driver's side door of his vehicle. PO Landusky then punched § 87(2)(b)'s testicles with his right hand.

According to PO Landusky, he did not remember using any physical force while effecting any vehicle stops on the incident date. PO Landusky did not remember pushing a civilian against his vehicle or punching his testicles. Sgt. Pekera and PO Bolte corroborated PO Landusky's statement.

According to § 87(2)(b) after PO Landusky performed a frisk of his pants pockets, PO Landusky put his hand inside all four pockets of § 87(2)(b)'s pants and the left and right side pockets of § 87(2)(b)'s jacket.

PO Landusky did not remember if he had performed a search of § 87(2)(b). According to the UF-250 report prepared by PO Landusky (encl. 9c-d), a frisk, but not a search, was performed of § 87(2)(b). Sgt. Pekera and PO Bolte did not remember if they saw PO Landusky performing a search of § 87(2)(b).

According to § 87(2)(b) PO Landusky removed § 87(2)(b)'s wallet from his pants pocket and threw it on the ground.

According to PO Landusky, he did not throw § 87(2)(b)'s wallet on the ground. Sgt. Pekera and PO Bolte corroborated PO Landusky's statement.

According to § 87(2)(b) as he interacted with PO Landusky, he saw from behind him that Sgt. Pekera and PO Bolte had opened the back door to his vehicle and appeared to be looking inside the back seat.

Sgt. Pekera, PO Bolte and PO Landusky did not remember performing any vehicle searches on the incident date. PO Landusky stated that if a civilian was asked to exit his vehicle for making furtive movements, and if a frisk revealed no weapons, a search of the lungeable areas of the civilian's vehicle would be performed. PO Landusky could not confirm if this was the case concerning § 87(2)(b).

According to § 87(2)(b) after telling Sgt. Pekera that he did not speak English well, Sgt. Pekera responded, "You should speak English because you're in America."

According to Sgt. Pekera, he did not make the above comment to § 87(2)(b). PO Landusky and PO Bolte corroborated Sgt. Pekera's statement.

According to § 87(2)(b) towards the end of the incident, PO Landusky asked him if he wanted a ticket.

PO Landusky's memobook (encl. 9a-b) noted a warning was issued to § 87(2)(b). PO Landusky did not remember discussing a warning in lieu of a summons with § 87(2)(b) and did not remember asking § 87(2)(b) if he wanted a ticket. Neither Sgt. Pekera nor PO Bolte recalled hearing PO Landusky make this statement to § 87(2)(b).

§ 87(2)(g)

**Allegation A. PO Jason Landusky stopped the vehicle in which § 87(2)(b) was an occupant.**

According to *People vs. Robinson*, a member of service has the authority to stop a vehicle when he has probable cause to believe that the driver has violated the Vehicle and Traffic Law (encl. 1a). § 87(2)(g)

**Allegation B. PO Jason Landusky used physical force against § 87(2)(b)**

§ 87(2)(g)

**Allegation C. PO Jason Landusky frisked § 87(2)(b)**

According to *People vs. Gonzalez*, an officer is authorized to perform a frisk of a motorist if he reasonably suspects the motorist to be in possession of a weapon, including such factors as furtive movements (encl. 1b-c). § 87(2)(g)

**Allegation D. PO Jason Landusky searched § 87(2)(b)**

§ 87(2)(g)

**Allegation E. PO Jason Landusky acted rudely toward § 87(2)(b)**

§ 87(2)(g)

**Allegation F. Sgt. Gregory Pekera searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation G. PO Peter Bolte searched the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(g)

**Allegation H. Sgt. Gregory Pekera made remarks to § 87(2)(b) based upon ethnicity.**

§ 87(2)(g)

**Allegation I. PO Jason Landusky threatened to issue a summons to § 87(2)(b)**

§ 87(2)(g)

Investigator:

Date: July 15, 2009



Supervisor: Margot Hesel

Date:

Reviewed by:

Date:

Reviewed by:

Date: